

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

WILLIAM ALLEN KIRKLAND,)
)
Plaintiff,)
)
v.) CIVIL ACTION NO.: 2:08-cv-86-WC
)
ELMORE COUNTY)
COMMISSION, et al.,)
)
Defendants.)

**DEFENDANTS, CHRISTOPHER KEARLY AND
RICKY LOWERY'S, MOTION TO DISMISS**

COME NOW Christopher Kearley and Ricky Lowery, Defendants in the above-styled cause, and move this Honorable Court to dismiss the Plaintiff's Complaint against them pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, as the Plaintiff's Complaint, and its component parts, separately and severally, fails to state a claim against them upon which relief may be granted. As reasons for so moving, said Defendants state as follows:

1. Plaintiff's federal official capacity claims against Chief Deputy Lowery must be dismissed because he has absolute immunity.
2. The Plaintiff has no cause of action under the Fourth Amendment.
3. Kearley and Lowery are entitled to qualified immunity.
4. Kearley and Lowery may not be held liable to the Plaintiff under a theory of *respondeat superior*.
5. The Plaintiff's state law claims are due to be dismissed as a matter of law because Defendants are entitled to absolute sovereign immunity and this Court lacks jurisdiction to hear the Plaintiff's state law claims.

- a. Defendants are entitled to sovereign immunity.
- b. The Eleventh Amendment to the United States Constitution also bars Plaintiff's state law claims.

WHEREFORE, THE PREMISES CONSIDERED, the Defendants, Kearley and Lowery, respectfully request that this Court dismiss each count of the Plaintiff's Complaint against them and award them any other relief to which they may be entitled.

Respectfully submitted this 10th day of March, 2008.

s/Daryl L. Masters
DARYL L. MASTERS (MAS018)
C. RICHARD HILL, JR. (HIL045)
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CERTIFICATE OF SERVICE

I hereby certify that on this the 10th day of March, 2008, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will provide notice to the following CM/ECF participant: **J. Scott Hooper, Esquire**.

s/Daryl L. Masters
OF COUNSEL